Finance Committee

Report on the Private Housing (Tenancies) Bill’s Financial Memorandum
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1. The remit of the Finance Committee is to consider and report on-
   a. any report or other document laid before the Parliament by members of the 
      Scottish Government containing proposals for, or budgets of, public expenditure or 
      proposals for the making of a tax-varying resolution, taking into account any report 
      or recommendations concerning such documents made to them by any other 
      committee with power to consider such documents or any part of them;
   b. any report made by a committee setting out proposals concerning public 
      expenditure;
   c. Budget Bills; and
   d. any other matter relating to or affecting the expenditure of the Scottish 
      Administration or other expenditure payable out of the Scottish Consolidated Fund.

2. The Committee may also consider and, where it sees fit, report to the Parliament on 
   the timetable for the Stages of Budget Bills and on the handling of financial business.

3. In these Rules, “public expenditure” means expenditure of the Scottish 
   Administration, other expenditure payable out of the Scottish Consolidated Fund and 
   any other expenditure met out of taxes, charges and other public revenue.

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**Introduction**

1. The Finance Committee issued a call for evidence on the Financial Memorandum (FM) of the [Private Housing (Tenancies) (Scotland) Bill](https://www.s Nay.co.uk/2015/financial-memorandum-private-housing-tenancies-bill/) in October 2015 in response to which thirteen responses were received.

2. To further explore the issues raised in the responses the Committee then took oral evidence on 11 November 2015 from the Scottish Government Bill Team.

3. Following the evidence session, the Bill Team wrote to the Committee on 18 November 2015 to provide further information in relation to a specific query regarding legal aid. The letter is attached at Annexe A.

**The Financial Memorandum**

4. The FM states that the Bill will—

   “create a new tenancy for all future private rented sector (PRS) lets. The short assured tenancy and assured tenancy, as outlined in the Housing (Scotland) Act 1988, will be superseded by the new, simplified and modernised statutory tenancy. The overall aim is to improve security of tenure for tenants, while providing appropriate safeguards for landlords, lenders and investors.”

5. The FM then states that that the Bill seeks to achieve this through the following provisions—

   - “the introduction of a new private residential tenancy for all future PRS lets. Following an initial period, in which the landlord may only give notice under very specific circumstances, this tenancy will continue indefinitely with both parties able to give notice at any time based on a repossession ground or if the tenant wishes to leave.

   - the introduction of a model tenancy agreement. The Bill allows Ministers to prescribe the mandatory terms of every tenancy agreement (the statutory terms as set out in schedule 2 of the Bill). A model tenancy agreement which incorporates these will be developed by the Scottish Government for use under the private residential tenancy.

   - landlords will no longer have the ability to regain possession of their property simply because the tenancy has come to its end date (otherwise known as the “no-fault” ground). Instead, a landlord will be required to use one of the proposed new grounds for repossession.
• These grounds will offer a more progressive route to repossession, covering all circumstances where a landlord may reasonably require possession of the property.

• Rents can only be increased once in a 12 month period (with 12 weeks’ advance notice) to allow rent predictability. Tenants will also be able to refer perceived unreasonable rent increases for adjudication to protect them from rent hikes.

• Scottish Ministers have the power to cap the levels of rent increases for sitting tenants in rent pressure zones (RPZs). This is a discretionary power which local authorities may apply to Ministers to make use of.”

Issues raised in Evidence

General comments

6. A number of organisations made general comment on the Bill in written evidence. The Association of Local Authority Chief Housing Officers (ALACHO), for example, stated “we do believe that the bill has financial implications for local authority housing services. These have not been accurately reflected in the FM.”

7. Similarly, COSLA suggested that “the financial burden to local authorities has been underestimated, particularly with regard to the set-up costs…the FM does not fully reflect the potential financial burden on local government.”

8. The Scottish Property Federation (SPF) stated—

   “Our members are strongly of the view that our comments were not reflected in the FM and we question the robustness of the information included. There are considerable financial implications for our investor agent and manager members which ultimately means there will be a knock on effect of additional costs for tenants including students…

   There is frequent reference to ‘modest’ and ‘negligible’ costs the extent of which have not been set out in the summary table or elsewhere in the Memorandum. These cumulative costs to a small to medium sized company can become overwhelming.”

9. When invited to respond to these comments in oral evidence, the Bill Team explained that the Government had engaged extensively with stakeholders, but that “no one has been able to give firm figures for the potential impact on the sector.” The Bill Team therefore felt that—

   “the best that we could do was to highlight in the financial memorandum the areas…where there is a potential for costs. We did that, but we could not always specify the costs, because that information was not available.”
10. The Bill Team went on to explain that in such circumstances, “we have expressed the cost as narrative or text, rather than affixing to it a figure whose robustness we could not be confident of.”

Tribunals

11. The FM states that the Government is expected to incur one-off initial costs of between £920,000 and £1,315,000 and ongoing costs estimated at between £815,000 and £1,475,000 per annum. The ongoing costs relate to annual operating costs for the First-tier Tribunal (FTT) (due to the additional number of cases that may be referred under the new tenancy) and for funding Rent Service Scotland to carry out rent adjudication. The FM goes on to state that “the Scottish Government has yet to decide if there will be a fee for applying to the FTT and whether legal aid will be made available.”

12. A number of respondents highlighted the lack of clarity on FTT fees and legal aid in written evidence. The ALACHO for example, suggested that “tenants and “good” landlords should not face additional costs in compliance or exercise of their rights through the FTT” stating—

“Charges to access the FTT and either no legal aid or significant delays as a result of legal aid applications are likely to adversely impact on the FTT’s credibility with tenants in particular.

The Scottish Government needs to come to a view on this matter quickly and put in place the necessary measures to ensure that access to the FTT is fully and effectively supported.”

13. Similarly, the SPF stated “it is unacceptable at this stage for the Scottish Government not to have decided whether to charge for applying to the FTT and whether legal aid will be made available.”

14. Shelter Scotland also expressed concerns regarding potential FTT fees and support stating that it was—

“strongly of the view that financial provision must be made for legal assistance at the tribunal through a mixture of both advice and representation. It is also the view of Shelter Scotland that there should be no fee for private tenants to access the tribunal.”

15. Bodies representing landlords also highlighted potential costs relating to tribunals with both the Council of Letting Agents (CLA) and the Scottish Association of Landlords (SAL) anticipating—

“that the accessibility of the First-tier Tribunal, and the fact that all of the grounds contain an element of discretion or would require the landlord to evidence that the ground they have used applies, will result in more tenants
deciding to try to contest their eviction through the tribunal process. This will result in additional costs to landlords and the tribunals service."

16. Whilst Scottish Land and Estates (SL&E) expressed its belief that “more cases will be referred to the FTT than currently go to the Sheriff Court as the tenant is in a stronger position to dispute a notice to leave.”

17. The Association of Residential Letting Agents (ARLA) agreed that no fee should be charged to access the FTT although it acknowledged that “the policy intention of the Bill is to provide a new tenancy that overall will be simpler and clear to understand, which should reduce instances of legal complications and legal costs.”

18. In response to questioning from the Committee about the FM’s lack of estimates in relation to tribunal fees or legal aid, the Bill Team explained that the new tribunal was being set up under the Tribunals (Scotland) Act 2014 and that whether fees or legal aid would be applicable would be “a collective decision for ministers, and it will be taken forward as part of the operational detail as the new tribunal is implemented.”

19. The Bill Team then explained that—

> “the assumptions that we have made for the financial memorandum are based on what we know: that there will not be a fee, although a fee could be charged in future; and that legal aid will not be available, because that is the case at present, subject to decisions to be taken by ministers.”

20. When asked whether it had been instructed by ministers to work from the premise that fees would not be charged, the Bill Team reiterated that it had worked on the basis of what was known at the time—

> “If there is a fee charged, that is not something that has been accounted for in the financial memorandum, because we do not know whether there will be a fee. We can only go with what we know.”

21. When asked when a decision could be expected, the Bill Team confirmed its understanding that ministers were expected to consult on fees in the new year before introducing any necessary secondary legislation in due course.

22. In response to questions about the position in respect of legal aid, the Bill Team confirmed that the position was similar. Legal Aid costs had not been included in the FM as the policy in respect of Tribunals was still under consideration. Whilst tribunal procedures were designed to be accessible and understandable and did not generally require legal representation, should it be decided that assistance by way of representation was needed, this would be put in place through secondary legislation. However, the Bill Team was unable to confirm whether a consultation on the issue was planned.
23. In response to suggestions from the Committee that the issue of both fees and legal aid could have a significant impact on numbers taking cases to the FTT, the Bill Team explained that the FM’s figures had been based on data provided by the Private Residential Tenancies Board (PRTB) in Ireland (adjusted to reflect the sizes of the respective PRS markets in both countries). The Bill Team confirmed that a fee was payable to the PRTB but when asked what the impact of a decision not to charge fees in Scotland might be, the Bill Team replied—

“If there is no fee, the figures are those that we set out in the financial memorandum. Those are the figures that we have assessed and provided...The assessment set out in the financial memorandum assumes that there are no fees; and we have not assumed that there is legal aid either. That is not to say that it might not happen, but that is what we put into the model when we produced the numbers.”

24. When asked whether it had undertaken any costings of the potential impact on the legal aid budget should ministers decide to make it available for the FTT, the Bill Team confirmed that it had not done so in relation to the Bill’s provisions.

25. The Committee suggested that it would be helpful to receive confirmation of whether such costings had been carried out, “even if they are broad estimates to inform the minister.”

26. In its letter dated 18 November 2015, the Bill Team stated that the Housing (Scotland) Act 2014 provided for private rented housing cases to transfer from the courts to Scottish Tribunals. The letter further confirmed that—

“As part of a wider consultation about the detail of how these cases will be heard by the First-tier Tribunal, the Government intends to consult on proposals on the question of legal assistance for private rented housing cases. That consultation will include an estimate of any costs expected to fall on the Legal Aid budget, and will give interested parties the opportunity to comment on it.”

27. The letter states that the FM accompanying the Bill that became the 2014 Act estimated that the cost of legal assistance for the 700 private rented housing expected to transfer would be around £25,000 (£14,000 for Advice and Assistance and £11,000 for Civil Legal Aid). The Government expects between 845 and 1,100 cases to transfer to the FTT as a result of the Private Housing (Tenancies) Bill although it makes clear that the impact on the legal aid budget would depend on the form of assistance provided. The letter concludes—

“In view of these uncertainties, it is not possible at present to estimate the cost to the Legal Aid budget of the new tenancy. I hope, however, that the information I have been able to provide will give the Committee a reasonable indication of the costs that are likely to arise.”

1 PRTB Fee is €15 online or €25 for paper transactions (paragraph 49 of FM).
28. The Committee considers that indicative figures setting out different scenarios depending on future ministerial decisions in respect of tribunal fees and legal aid should have been provided in the FM.

Rent Pressure Zones (RPZs)

29. The FM notes that designation of a RPZ could be expected to have associated costs and that local authorities “may incur modest costs” in this respect. However, the FM states that “it is not possible to quantify this since the size and scale of any RPZ would be determined by the local authority.”

30. The FM also suggests that landlords and letting agents could be expected to incur “modest” costs in relation to properties in a designated RPZ. Using historical data the FM provides an illustrative example of “various rent increase caps on an average two-bedroom apartment in Aberdeen City and Shire Broad Rental Market Area” at Table 6. However, the FM notes that “the impact of any potential future designation of a RPZ will depend on future rental trends in that area and the exact way in which the rent increase cap is specified (which is set out in the Bill as being at least CPI +1%).”

31. ALACHO suggested that the FM underestimated likely costs associated with a RPZ although, given the expectation that they would be utilised infrequently, it suggested that “the best approach to these costs will be to discuss them directly with the Local Authorities involved as and when the issue arises and make appropriate arrangements to offer assistance as required.”

32. Similarly, Glasgow City Council (GCC) suggested that “a contingency fund could be set aside for local authorities from which they can draw down a resource (outwith the Block Grant settlement) should there be demand to designate RPZs and otherwise provide independent advice.”

33. ALACHO further stated that “the most significant downstream cost is likely to arise in relation to responding to repossession actions in future.” The creation of certain mandatory grounds for repossession “which essentially relate to business change and business failure in the PRS” it suggested “will effectively require Local Authorities to underwrite business change or failure in the PRS through the provisions of the Homeless Person’s legislation.”

34. GCC suggested that the methodology for identifying RPZs was more complicated than suggested “because rent rises vary according to the demand for particular sizes and types of PRS housing in particular locations.” GCC also questioned the basis for the FM’s suggestion that local authorities would incur only “modest” costs in respect of RPZs.

35. GCC went on to express its belief that—
“more effort should have been made to determine the actual likely costs to local authorities through a formal consultation process and / or by sampling and negotiation at least with the four city authorities and Highland Council in respect of Inverness. This is particularly the case with the cost implications of investigating the feasibility of setting up RPZs. Local authorities simply will not progress these unless there are clear guidelines and financial support.”

36. GCC further stated that additional costs are likely to be incurred “by welfare advice organisations and other third party bodies such as rental sector landlords arising from the change-over between the current tenancies and the new single tenancy” as greater numbers of tenants could be expected to seek independent advice before signing a tenancy agreement.

37. When invited to respond to GCC’s concerns, the Bill Team pointed out that the power to create an RPZ would be discretionary. The Government had worked closely with local government bodies including COSLA and ALACHO and “the issue of cost to them was not really raised” during consultations prior to the FM’s publication. However, the Bill Team went on to confirm that it intended to meet with GCC in the near future and would be “more than happy” to discuss the issues raised in written evidence with it.

38. The FM also notes that “a possible negative impact of a rent increase cap is that it may deter investment in housing and reduce the supply of new rented housing, or investment in improving the quality of existing housing, due to the lower expected rental return.” However, the FM expects such concerns to be mitigated by the design of the rent increase cap.

39. The SPF agreed with this potential risk, stating that—

“the introduction of rent controls or localised rent cap zones may limit a landlord’s ability to improve the quality of their property, including for any new standards in the future. It would also give no protection from any increased borrowing costs. This may also discourage further investment, including from institutions, to grow the sector and build more new homes for private rent.”

40. The SPF went on to suggest that the Bill’s provisions may deter investors, stating that “some institutional members have already confirmed that Scotland has been, or will be, given an added ‘risk premium’… this will undoubtedly have an impact on the £billions willing and able to be invested in the PRS.”

41. When invited to respond to these concerns in oral evidence, the Bill Team explained that attracting more investment into the housing sector was one of the Government’s key policy aims and that it had been mindful of this when designing its proposals in relation to RPZs. The Government had attempted to provide some certainty to investors who, on the basis of feedback received since the Bill’s
publication, “seem to be comfortable knowing that initial rents will continue to be market led and that there will be a minimum for the rent cap, because that enables them to model what they would see as the worst case scenario should a rent cap be put in place.” Further, the Bill Team reiterated its expectation that RPZs would apply only in limited circumstances with rents continuing to be market led in the main.

42. When asked whether there was any evidence of investors being encouraged to invest in Scotland as a result of the Bill’s proposed changes, the Bill Team highlighted a recent meeting with Lowther Homes, the PRS arm of the Wheatley Group, which had “invested significantly recently and is looking to invest even more in the long term.” The Bill Team was therefore of the view that “the stability caused by the Bill could encourage more people to come in and invest.”

43. In response to questioning from the Committee regarding whether landlords in RPZs would be able to increase rents to reflect any future rise in interest rates (or indeed, whether caps would decrease should interest rates fall), the Bill Team explained that ministers would have the power to change the inflation index—

> “Depending on what has happened with inflation, we could change the index that would be used for the setting of any cap. We would also be able to repeal a rent pressure zone, if it was felt that the conditions had changed to such an extent that a zone that was in place—it could be in place for up to five years—was no longer required. There is a facility in the bill to repeal a zone, if that is found to be necessary.”

44. When asked whether the Bill would compel ministers to act promptly in such circumstances, the Bill Team confirmed that they would be required to consult with landlords and tenants when designating an RPZ but that “there is nothing in the Bill that would make ministers have to change the cap because of a change in interest rates.”

45. When the Committee pointed out an apparent contradiction in that one of the key aims of the Bill was to prevent landlords from making excessive profits and therefore to reduce costs for tenants, whilst the FM appeared to suggest there would be no significant financial impact on individuals or businesses, the Bill Team reiterated that rents would continue to be market led with the exception of RPZs for which illustrative figures had been set out in table 6 of the FM.

46. When invited to expand upon how a “market led” rent would be defined, the Bill Team explained that it would be based upon numerous averages within a defined area. It further confirmed that the Bill would enable tenants to seek adjudication from Rent Services Scotland “which would then determine whether the increase was fair or reasonable” by assessing what others were paying for “similar, comparable properties.”
47. The lead committee may wish to invite the Minister to provide an update on the outcome of the Government’s discussions with Glasgow City Council.

48. The lead committee may also wish to further explore the issue of whether ministers should be required to review rent caps in light of changes to interest rates.

Grounds for repossession

49. A number of bodies representing landlords expressed concerns in written evidence about the potential implications of the removal of the “no-fault” grounds for eviction with both the CLA and the SAL suggesting that this could prolong the time taken to evict tenants leading to additional costs to landlords. Both bodies noted that at present, evictions often took two to three months but estimated that the Bill’s proposals would mean that “it will take a landlord at least 5 months to recover possession from a non-paying tenant. Clearly this will have big financial implications for landlords in terms of lost revenue.”

50. ARLA expressed similar concerns, stating that the Government “must take into account the likely impact of rent arrears during longer notice periods and as the FTT is not yet established, we do not know how long it will take for a landlord to successfully regain possession of their property through the FTT.”

51. When invited to respond to these concerns, the Bill Team stated that at present “it can take months for a legal eviction to take place. That is one of the reasons why we are looking to move to a more accessible, specialist tribunal system, which landlords broadly support.”

52. When it was suggested that written evidence received from some landlords did not appear to support this view, the Bill Team stated that as court cases, particularly those over rent arrears, could take some time “landlords supported then and continue to support the FTT as an effective place of redress for both tenants and landlords.”

53. SL&E also warned of the potential impact in rural areas, for example where employees have to live on-site and proposed “a further ground to allow repossession of a property to house an employee who requires to live in the property to fulfil their job.”

54. However, Shelter Scotland suggested that the removal of the “no-fault” route for repossession could reduce “churn” and lead to tenants staying in their homes for longer, “leading to a potential reduction in the number of void months for landlords. Therefore this change could result in greater rental income for landlords in some circumstances.”

55. In oral evidence, the Bill Team acknowledged that “the main landlord representatives would be less supportive of not having a no-fault ground” and that
the Government needed to get the balance right. However, the Bill Team continued—

“Fundamentally, they will still be able to sell properties and to manage properties effectively. They will still be able to take action if, for example, there are rent arrears.”

56. The lead committee may wish to further explore the potential financial implications for landlords of the removal of the “no-fault” grounds for repossession.

Student lets

57. Both the CLA and the SAL suggested in written evidence that the Bill would prevent landlords from ending student lets at the end of the academic year. This, they suggested would—

“lead landlords to require tenants to enter into (and pay rent for) 12 month contracts rather than 9/10 month contracts that are often used at present (with the landlord using the property for other purposes for 2-3 months over the summer)."

58. The SPF expressed similar concerns, stating that “there will be a cost implication for the student-let market if landlords of student-lets cannot automatically end the lease at the expiry of the fixed term and provide the necessary flexibility to fit with the academic year.”

59. When asked about student lets, the Bill Team confirmed that students would “basically have the same rights under the new tenancy as all other tenants” but that “nothing in the Bill deliberately tied tenants to year-long tenancies.” Rather than having a set date on which the tenancy would end, it would be the responsibility of tenants to give eight months’ notice of their intention to leave and landlords would be expected to engage with their tenants regularly to ensure they were aware of their intentions—

“The key difference is that the decision of when to leave is in tenants’ hands—unless, of course, the landlord uses one of the grounds. However, there is no ground at the moment—and we do not intend to have one—specifically to end a tenancy because a tenant is a student.”

60. The Bill Team went on to explain that in its view, landlords would be unlikely to incur costs as “if students do not hand in their notice, they will still be paying rent.” When the Committee expressed doubts that all students would remember to give sufficient notice and that some might simply “walk away at the end of June” leaving their landlord out of pocket, the Bill Team restated its position that landlords should have regular engagement with their tenants meaning they should
have adequate notice of their intentions and in the worst-case scenario, eight weeks. The Bill Team further pointed out that most student tenants would have guarantors and that ultimately landlords would still have the option of going to court to recover any unpaid rent.

61. The Bill Team also confirmed that—

“If a landlord has a student let and they look to let the property out over the summer, they would still be able to do that, subject to the tenant moving out. If they want to let to the student again for the next term, they will be able to do that, but it would be on a new tenancy.”

62. When asked whether landlords had indicated to the Government that they might move from nine month to twelve month student lets to mitigate any perceived risk of losing out on rent over the summer, the Bill Team stated that they had not.

63. When asked whether the Government had considered having separate arrangements for students, the Bill Team explained that the policy intention was “to have a simpler, clearer system” and ministers did not wish to “differentiate between students and other tenants in a way that would potentially leave students with fewer rights than other tenants in the PRS.”

64. The University of Edinburgh’s submission suggested that the FM did not “capture the scale of potential disruption to the Edinburgh rental property market.” It further stated—

“we anticipate that this disruption is likely to have implications for the nature and scale of accommodation which Universities and Colleges in Edinburgh will need to provide while the market adjusts. It is therefore absolutely vital, in this context, that accommodation “provided by Universities or Colleges” remains exempt from the proposed legislation.”

65. In oral evidence, the Bill Team confirmed that university or college owned accommodation would be exempt from the legislation.

66. The CLA and SAL also suggested that the loss of the “no-fault” grounds might lead to landlords leaving the sector leading to “upward pressure on rents for all tenants.”

67. When invited to respond to suggestions that the Bill might deter those considering renting out a property from doing so, the Bill Team stated that the proposed grounds for repossession were intended to provide a balance to ensure properties could be repossessed “in all reasonable circumstances” (including to sell or as a result of rent arrears)—

“We feel that through the grounds that are set out in the Bill, we have been able to provide cover for landlords so that they are still able to use or to let
out their property, and to recover their investment in it, in a way that is similar to the existing position."

68. SL&E also highlighted its members’ concerns in relation to short-term lets—

“Although the bill allows for short tenancies there is no guarantee that the tenant will actually leave at the end of that set time and the landlord is relying on the tenant’s goodwill. Landlords will therefore avoid the risk and leave a house empty taking on extra costs of draining it down, ensuring security, and possible council tax payments depending how long it will be empty.”

69. The Committee has some concerns about the practical implications of the proposed arrangements in respect of student lets. The lead committee may wish to further explore the issue with the Minister and seek reassurances that adequate protections are in place both for landlords and student tenants.

Awareness raising and training

70. The FM notes that the Government expects to incur costs of between £250,000 and £550,000 in relation to its marketing campaign and has set aside a further £300,000 to “support advice and representative bodies in the sector to train landlords and tenants on how the new tenancy will operate.” However, East Ayrshire Council (EAC) sought clarity over whether training would be provided to local authority staff free of charge. EAC’s submission further stated that it expected to incur additional enforcement activity costs.

71. A number of respondents including ALACHO, GCC and South Ayrshire Council (SAC) also suggested that, in their experience, awareness raising worked best at a local level in partnership with local agencies. SAC for example, stated that it would be “negligent if the Local Authority did not also attempt to raise awareness at a local level.”

72. GCC suggested that the FM’s focus appeared to be on costs falling on the Government, stating—

“There is no reference to the original statements in the second consultation document on the downside of introducing rent pressure zones as it affects institutional investment, nor to increased demand for advice at local authority level, and any consequences in respect of increased demand for accommodation for homeless persons.”

73. Similarly, SAC stated that whilst the FM provided a clear indication of costs on the Scottish Government—
“it does not consider fully the resource impact on Local Authorities. Councils across Scotland provide various advice and enforcement services for private landlords, funded largely from landlord registration income. When disputes arise between private tenants and landlords their first port of call is the local Council for advice and assistance – people want a local response as far as possible and this needs to be recognised at a national level.”

74. ALACHO further stated that “local authorities will face additional costs in responding to enquiries from landlords and tenants and in training and supporting their own staff to deal with these enquiries.” In light of the budgetary pressures facing local authorities, ALACHO recommended that the Government—

“should give some consideration to establishing a specific transitional fund for Local Authorities and relevant advice and third sector organisations. Consideration should also be given to increasing the fees for landlord registration to better support enforcement activity across the sector.”

75. SAC also suggested that “costs could be met from increases in private landlord accreditation/registration income; however this would need to be balanced with the need to keep private landlords committed to the sector.”

76. When invited to respond to the concerns expressed by local government, the Bill Team stressed that it had worked closely with local authorities and their representative bodies and engaged in “extensive consultation” with them. Whilst few local authorities had raised the issue of training costs the Bill Team undertook to discuss GCC’s concerns at their forthcoming meeting.

77. The Bill Team went on to suggest that whilst some elements of the Bill could increase demand on certain council services, it was also likely that they could see savings in other areas—

“The potential impact on, say, homelessness is that there is likely to be less pressure on homelessness from the PRS, because tenants will have more security of tenure. If there are areas where, from a local authority’s perspective, there might be issues with regard to the demand coming to them, there might well be other areas where, because of what the policy is seeking to achieve, the demand is less.”

78. With specific regard to training, the Bill Team stated that when drafting the FM—

“we were thinking principally of representative bodies and advice agencies, but it might well be that there is something we can work with in that for local authorities, too, if they make a good case to us that such a move would benefit them.”

79. The Bill Team went on to confirm that it was “very open to discussing these matters further with both ALACHO and COSLA.”
80. From a private sector perspective, ARLA also stated—

“On the issue of training we don’t think the costings have been accurately reflected in the FM. For letting agents in particular, changing the tenancy regime will involve significant changes to IT systems and Content Management Systems as well as staff training. Compliance costs are likely to run into tens of thousands of pounds for independent agencies and hundreds of thousand pounds for larger firms. Therefore we don’t think that the figures quoted in Table 1 for training costs (£11,000-£17,000 for a large scale national organisation) under the heading ‘other bodies, individuals and businesses’ will be enough.”

81. As these suggested costs would be difficult for smaller firms in particular to absorb, ARLA expressed concern that “the Bill could see independent agencies either going out of business or choosing to sell to larger firms.”

82. When invited to respond to these concerns, the Bill Team acknowledged that the Bill could be expected to have some impact on letting agents but suggested that ARLA’s figures “seemed fairly high.” The Bill Team further noted that other bodies such as the CLA, the Scottish Association of Landlords and Shelter seemed to suggest that “the methods that have been used to calculate the figures certainly appear to be fairly sound.”

83. The Bill Team also pointed out that as the new tenancy “will be easier to use and simpler than the current one” and that a standard model tenancy would be provided, letting agents could also be expected to see some cost benefits in some areas.

84. The lead committee may wish to invite the Minister to provide an update on discussions with local government bodies in relation to funding for training and awareness raising.

Conclusion

85. The Infrastructure and Capital Investment Committee is invited to consider the above in its scrutiny of the Bill at Stage 1.
Dear Mr Hunter

When I gave evidence on the Private Housing (Tenancies) (Scotland) Bill on 11 November, Jacqui Baillie MSP asked if the Scottish Government had made an estimate of the costs to the Legal Aid budget that were likely to arise from the Bill’s provisions, and whether these could be made available to the Committee. I advised the Committee that the Government had not yet made an estimate of these costs. I can now provide the Committee with further information about the Government’s position.

The Housing (Scotland) Act 2014 includes provisions to transfer private rented housing cases from the Courts to the Scottish Tribunals. As part of its work to implement these provisions, the Government is preparing for these cases, including cases relating to current tenancies in the private rented sector, to transfer to the Tribunals in late 2016. As part of a wider consultation about the detail of how these cases will be heard by the First-tier Tribunal, the Government intends to consult on proposals on the question of legal assistance for private rented housing cases. That consultation will include an estimate of any costs expected to fall on the Legal Aid budget, and will give interested parties the opportunity to comment on it.

When the Government introduced the Bill for the 2014 Act, it estimated that the cost of legal assistance for the 700 private rented housing cases each year that would transfer from the Courts to the Tribunals would be about £25,000 – comprising £14,000 for Advice and Assistance, and £11,000 for Civil Legal Aid. That was based on continuing the same form of legal assistance in the First-tier Tribunal as is currently available for these cases in the Courts. The Government noted if another form of legal assistance were to be provided, such as Assistance by way of Representation, that the cost could be less.

Subject to the Parliament approving the Bill, the Government expects the private residential tenancy to be introduced towards the end of 2017. Disputes over the new tenancy, which over time will replace current tenancies, will be heard by the Tribunal. The Government estimates that the number of such disputes will be between 845 and 1,100 each year. The impact that these cases will have on the Legal Aid budget will depend on the form of legal assistance that is to be provided in the First-tier Tribunal for private rented housing cases, and on the net increase in total cases being heard (given that cases relating to current tenancies will reduce as the tenancies themselves come to an end and are replaced by the new tenancy). In view of these uncertainties, it is not possible at present to estimate the cost to the Legal Aid budget of the new tenancy. I hope, however, that the information I have been able to provide will give the Committee a reasonable indication of the costs that are likely to arise.

Kind regards

Barry Stalker
Team Leader, Private Housing (Tenancies) (Scotland) Bill